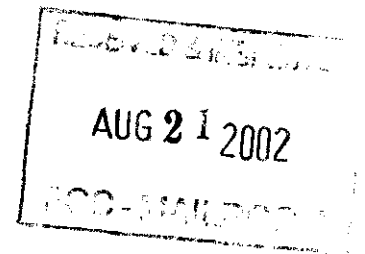


Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Eureka Unified School District 389)	File No. SLD-182840
Eureka, Kansas)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: August 8, 2002

Released: August 9, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the Eureka Unified School District 389 (Eureka), Eureka, Kansas, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Eureka seeks review of SLD's denial of its application for discounts for Internet access under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Eureka's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative

¹ Letter from Leo Davis, Eureka Unified School District 389, to Federal Communications Commission, filed February 16, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT FOR INELIGIBLE SERVICES."⁷ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁸ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute thirty percent or more of the total.⁹ An applicant can avoid denial by subtracting out, at the time of its initial application, the cost of ineligible services.

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (September 1999), at 18 (FCC Form 471 Instructions).

⁸ FCC Form 471 Instructions at 23.

⁹ See *Request for Review of the Decision of the Universal Service Administrative Company by Uby Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 23267 (Com. Car. Bur. rel. 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. rel. 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.

4. Eureka filed its Funding Year 2000 FCC Form 471 on January 19, 2000.¹⁰ In Funding Request Number (FRN) 406031, Eureka sought discounts for Internet access to be provided by Twotrees Technologies, LLC, for a pre-discount total of \$19,200. Attached to its Form 471 was a description of services to be provided in this FRN. The attachment described the pre-discount costs as \$7,200 for yearly district management fees and \$12,000 for "1-512K frame relay with Internet Access." By letter dated April 21, 2000, SLD denied FRN 406031.¹¹ SLD explained that 30% or more of the FRN included requests for filtering and management services, which are ineligible products based on program rules.

5. Eureka then filed an appeal with SLD.¹² Eureka indicated that no filtering services were included in the FRN, rather the cost of the filtering service had been deducted prior to the funding request. With respect to ineligible management fees, Eureka argued that the total cost for management fees was \$7,200, where \$3,000 represented the cost for firewall services and \$4,200 for e-mail, webpage hosting, and domain name system (DNS).¹³ Eureka maintained that the only part of the management fee that was ineligible was the firewall services, which constitutes only 15.6% of the total FRN prediscount value. Eureka therefore maintained that SLD improperly applied the 30% percent rule in denying its funding request.

6. SLD issued its decision on the appeal on February 5, 2001.¹⁴ SLD agreed that FRN 406031 did not include filtering services.¹⁵ However, SLD disagreed with Eureka's explanation of the eligibility of the management fees.

7. In its decision, SLD noted that Eureka's requested services were broken down into two separate invoices, one for frame relay Internet access in the amount of \$12,000 per year and the other for management fees (including e-mail, web hosting, firewall service, and DNS), in the amount of \$7,200 per year. SLD determined that since the management fees were not bundled within Eureka's request for frame relay Internet access, the fees were ineligible under program rules.¹⁶ SLD also noted that firewall services would be considered ineligible even if

¹⁰ FCC Form 471, Eureka Unified School District 389, filed January 19, 2000. In prior years, this funding period was referred to as Funding Year 3. Funding years are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2000 and ends on June 30, 2001, previously referred to as Funding Year 3, is now called Funding Year 2000. The funding period which begins on July 1, 2001 and ends on June 30, 2002 is now known as Funding Year 2002, and so on.

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Leo Davis, Eureka Unified School District 389, dated April 21, 2000.

¹² Letter from Leo Davis, Eureka Unified School District 389, to Federal Communications Commission, filed May 1, 2000 (SLD Appeal).

¹³ *Id.*

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Leo Davis, Eureka Unified School District 389, dated February 5, 2001.

¹⁵ *Id.* The total to be paid to Twotrees was \$24,000 annually, however, the \$4,800 for filtering services had been deducted and the pre-discount amount for FRN 406031 was listed as \$19,200 (\$24,000 minus 4,800).

¹⁶ *Id.*

bundled with Internet access.¹⁷ SLD stated that program rules provide that, if 30% or more of an applicant's funding request includes ineligible services, the funding request must be denied. SLD concluded that because Eureka failed to demonstrate that its application did not include less than a 30% request for ineligible services, the FRN was denied.¹⁸

8. Eureka then filed the instant appeal with the Commission.¹⁹ Eureka maintains that its application consists of a single request that was filed with one service provider and one FRN.²⁰ Eureka explains that it receives and pays one invoice to Twotrees for Internet access, but Twotrees separated the filtering costs because filtering costs are ineligible under program rules. Finally, Eureka concedes that firewall services are ineligible, but argues that the cost for firewall services included in its funding request constitutes only 15.6% of the total request.²¹

9. We have carefully reviewed the record before us in this matter. With its FCC Form 471, Eureka attached a copy of a quote prepared by Twotrees for Internet access. The quote stated that Twotrees would provide a frame relay network to professionally monitor and manage email, proxy DNS, and firewall servers.²² The quote indicated that Twotrees would provide unlimited internal and external web page space, filtering, monitoring, and domain name service management.²³ The total price of the service provided by Twotrees was listed at \$24,000 per year, with \$7,200 of this fee for "yearly district management fees," \$4,800 for filtering, and \$12,000 for frame relay Internet access.²⁴ Based on this information, SLD denied Eureka's funding request as a violation of the 30% rule.

10. We determine that the record supports SLD's determination that the requested services are ineligible under program rules based on the 30% policy. As Eureka noted in its Request for Review, firewall services are ineligible under program rules. In addition, the management fees for which Eureka seeks discounts are also ineligible under program rules. Since at least March 27, 1998, network management systems have been clearly identified on SLD's website as ineligible.²⁵ Thus, of the \$19,200 pre-discount amount requested in FRN

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Request for Review.

²⁰ *Id.*

²¹ *Id.*

²² Eureka FCC Form 471 Attachment, letter from Twotrees to Eureka Unified School District, dated December 29, 1999.

²³ *Id.*

²⁴ *Id.*

²⁵ See SLD web site, Eligible Services List (March 27, 1998) <<http://www.sl.universalservice.org/reference/eligible.asp>>. The March 27, 1998 eligible services list on the SLD website defined network management services as "[a] system of equipment used in monitoring, controlling, and managing a data communications network."

406031, \$7,200 of the cost (or 37.5% of the total request) was for ineligible services. SLD therefore properly denied Eureka's funding request because more than 30% of the request was for ineligible services. We thus uphold SLD's funding decision and deny Eureka's Request for Review.

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Eureka Unified School District 389, Eureka Kansas, on February 16, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark Seifert / by ENE

Mark Seifert, Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau